



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE
4949-A Cox Road, Glen Allen, Virginia 23060
(804) 527-5020 FAX (804) 698-4178
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

James Golden
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
BLUESTONE FARM SOLAR, LLC
FOR
BLUESTONE FARM SOLAR
VPDES Permit No. VAR10M543**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Bluestone Farm Solar, LLC, regarding Bluestone Farm Solar, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “2019 Permit” means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2019 and which expires on June 30, 2024.
2. “Bluestone” means Bluestone Farm Solar, LLC, a limited liability company authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Bluestone is a “person” within the meaning of Va. Code § 62.1-44.3.
3. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.

4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Facility" or "Site" means Bluestone Farm Solar located on Spanish Grove Road in Mecklenburg County, Virginia, from which unpermitted discharges of stormwater associated with construction activity occurred.
8. "Inspection" means a Comprehensive Site Inspection.
9. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
14. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
15. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

16. “Virginia Stormwater Management Act” means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
17. “Va. Code” means the Code of Virginia (1950), as amended.
18. “VAC” means the Virginia Administrative Code.
19. “VPDES” means Virginia Pollutant Discharge Elimination System.
20. “VSMP” means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
21. “VSMP authority” means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
22. “VSMP Regulations” means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. Bluestone owns and operates Bluestone Farm Solar located in Mecklenburg County, Virginia, from which stormwater associated with construction activity is discharged.
2. On September 1, 2020, DEQ granted coverage to Bluestone under the 2019 Permit and assigned Bluestone registration number VAR10M543. The 2019 Permit authorizes Bluestone to discharge stormwater associated with construction activities from the Site to surface waters with the Commonwealth, in strict compliance with terms and conditions of the 2019 Permit.
3. Stormwater from construction activities at the Site discharged to Little Bluestone Creek and Bluestone Creek, which are surface waters located wholly within the Commonwealth and are “state waters” under the State Water Control Law.

4. DEQ is the VSMP authority for the Site.
5. On September 24, 2020, DEQ staff conducted an inspection of the Site and observed that the SWPPP and the SWPPP amendments and modification logs did not contain the Permit-required signatures.

2019 Permit Part II(C)(5) states: "Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K."

9 VAC 25-870-54(G) states: "The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site."

6. During the September 24, 2020 inspection, DEQ staff observed that a copy of the approved stormwater management plan was not maintained in the SWPPP.

2019 Permit Part II(B)(3)(a) states: "The SWPPP shall include the following items...Except for those projects identified in Part II B 3 b, a stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), or an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department."

9 VAC 25-870-54(C) states in part: "A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

7. During the September 24, 2020 inspection, DEQ staff observed that corrective actions were not being taken in accordance with the 2019 Permit. The SWPPP site inspection reports indicated that existing control measures were failing to minimize pollutants in stormwater discharges and modifications to the control measures were necessary to minimize pollutant discharges. However, the control measures were not modified to minimize pollutant discharges.

2019 Permit Part II(H)(1) states in part: "Corrective actions. 1. The operator shall implement the corrective actions identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority."

8. During the September 24, 2020 inspection, DEQ staff observed that several onsite erosion and sediment control measures had not been completed, stabilized, nor made operational prior to land disturbance within the drainage area.

2019 Permit Part II(B)(2)(c)(9) states: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications implemented to ...Utilize outlet structures that withdraw stormwater from the surface (i.e. above the permanent pool or wet storage water surface elevation), unless unfeasible when discharging from sediment basins or sediment traps "

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

9 VAC25-840-40(4) states: "Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place."

9. During the September 24, 2020 inspection, DEQ staff observed that stockpiles were not protected with sediment trapping measures, stabilized, or had sediment trapping measures in need of maintenance

9 VAC 25-840-40(2) states: "During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site."

9 VAC 25-870-54(B) states: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations."

10. During the September 24, 2020 inspection, DEQ staff observed that sediment trapping measures were not installed or maintained in accordance with approved plans and the 2019 Permit.

2019 Permit Part II(F)(1) states in part: "All control measures shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications..."

9 VAC 25-840-60(A) states: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities...."

11. During the September 24, 2020 inspection, DEQ staff observed that sediment basins and associated diversions were not stabilized and exhibited erosion.

2019 Permit Part II(B)(2)(c)(8) states in part: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications implemented to: Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days..."

9 VAC 25-840-40(5) states: "Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation."

9 VAC 25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities...."

12. During the September 24, 2020 inspection, DEQ staff observed cut and fill slopes at the Site were not stabilized and exhibited erosion.

2019 Permit Part II(B)(2)(c) states in part: "An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications..."

9 VAC25-840-40(7) states: "Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. Slopes that are found to be eroding excessively within one year of permanent stabilization shall be provided with additional slope stabilizing measures until the problem is corrected."

9 VAC25-870-54(B) states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

13. During the September 24, 2020 inspection, DEQ staff observed stormwater conveyance channels had missing or incomplete outlet protection and were not stabilized.

9 VAC 25-840-40(11) states: “Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.”

9 VAC25-870-54(B) states in part: “An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities...”

14. The Department has not issued coverage under any permit or certificate to Bluestone other than under the 2019 Permit.
15. Based on the results of the September 24, 2020 inspection, the Board concludes that Bluestone violated 9 VAC 25-840-40(2), 9 VAC 25-840-40(4), 9 VAC 25-840-40(5), 9 VAC 25-840-40(11), 9 VAC 25-840-60(A), 9 VAC 25-870-54(B), 9 VAC 25-870-54(C), and 9 VAC 25-870-54(G), as described in paragraphs C(5) through C(13) of this Order.
16. PRO issued a Notice of Violation for the violations noted above in paragraphs C(5) through C(13), as follows: NOV No. 2020-10-PRO-203, issued November 17, 2020.
17. On December 15, 2020, Department staff met with representatives of Bluestone to discuss the violations.
18. On February 4, 2021, DEQ staff conducted an inspection of the Site. The inspection verified that the violations as described in paragraphs C(6) through C(13), above, have been corrected.
19. On March 11, 2020, Bluestone received plan approval for a 2019 Permit modification. The 2019 Permit modification verifies that the violations as described in paragraph C(5), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Bluestone and Bluestone agrees to:

1. Pay a civil charge of \$12,923 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Bluestone shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Bluestone shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Bluestone for good cause shown by Bluestone, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2020-10-PRO-203 dated November 17, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Bluestone admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Bluestone consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Bluestone declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Bluestone to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Bluestone shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a

lack of good faith or diligence on its part. Bluestone shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Bluestone shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Bluestone. Nevertheless, Bluestone agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Bluestone has completed all of the requirements of the Order;
 - b. Bluestone petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Bluestone.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Bluestone from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Bluestone and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Bluestone certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Bluestone to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Bluestone.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Bluestone voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2021.

James Golden, Regional Director
Department of Environmental Quality

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Bluestone Farm Solar, LLC voluntarily agrees to the issuance of this Order.

Date: 4-23-2021 By: [Signature], VICE PRESIDENT
(Person) (Title)
Bluestone Farm Solar, LLC

Commonwealth of Virginia

City/County of Kansas City, Jackson County

The foregoing document was signed and acknowledged before me this 23rd day of
April, 2021, by William M Keeney who is
Vice President of Bluestone Farm Solar, LLC on behalf of the company.

[Signature]
Notary Public
21656641
Registration No.

My commission expires: 3/2/2025

Notary seal:

KATY LYNNE BERGERON
NOTARY PUBLIC-NOTARY SEAL
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES 3/2/2025
COMMISSION # 21656641